

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0446
Withholding Tax
Responsible Officer
For the Tax Period 1999-2001

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ISSUE

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-8.1-5-1(b), IC 6-3-4-8(f).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was a shareholder and manager of a corporation. This corporation failed to pay its withholding taxes during the tax period 1999-2001. The Indiana Department of Revenue assessed the unpaid withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax and requested that the Letter of Finding be based upon the documentation in the file.

1. Sales and Withholding Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer, who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(f), which provides in relevant part that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The taxpayer presented substantial documentation that he sold his interest in the corporation in 1993 and that he terminated his employment with the corporation on December 29, 1993.

Therefore, he is not a responsible officer with the duty of remitting corporate withholding taxes to the Indiana Department of Revenue after December 29, 1993.

Finding

The taxpayer's protest is sustained.

KMA/JMM/05/01/12